MONTANA LEGISLATIVE HISTORY

Chapter 194 19 83

Bill H 559 S _____ Original bill & history X C

H. Committee on State Administration			S. Committee on State Administration		
Hearing Date(s)	Feb 02	✓ C	Hearing Date(s)	Mar 02	✓ C
	_____	____C		_____	____C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Feb 02	✓ C		Mar 02	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 557

INTRODUCED BY SANDS

BY REQUEST OF THE SECRETARY OF STATE

IN THE HOUSE

January 29, 1983	Introduced and referred to Committee on State Administration.
February 7, 1983	Committee recommend bill do pass. Report adopted.
February 8, 1983	Bill printed and placed on members' desks.
February 9, 1983	Second reading, do pass.
February 11, 1983	Considered correctly engrossed.
February 12, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 12, 1983	Introduced and referred to Committee on State Administration.
March 2, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 4, 1983	Second reading, pass consideration.
March 5, 1983	Second reading, concurred in as amended.
March 8, 1983	Third reading, concurred in. Ayes, 47; Noes, 0.

IN THE HOUSE

March 8, 1983	Returned to House with amendments.
March 10, 1983	Second reading, amendments concurred in.
March 11, 1983	Third reading, amendments concurred in.
	Sent to enrolling.
	Reported correctly enrolled.

House BILL NO. 557

INTRODUCED BY Lamb

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND AND GENERALLY REVISE THE LAWS RELATING TO THE REQUIREMENTS FOR EXECUTING CERTAIN DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING PENALTIES FOR MAKING FALSE STATEMENTS; AMENDING SECTIONS 30-13-203, 30-13-207, 30-13-212, 30-13-311, 30-13-313, 30-13-318, 35-1-201, 35-1-209, 35-1-212, 35-1-213, 35-1-306, 35-1-412, 35-1-602, 35-1-612, 35-1-804, 35-1-805, 35-1-901 THROUGH 35-1-903, 35-1-907, 35-1-908, 35-1-911, 35-1-1008, 35-1-1013, 35-1-1017, 35-1-1101, 35-2-413, 35-2-1201, 35-6-201, 35-15-201, 35-15-204, 35-15-205, 35-15-305, 35-15-504, 35-17-202 THROUGH 35-17-204, 35-17-504, 35-18-203 THROUGH 35-18-206, 35-18-401, 35-18-402, 35-18-404, 35-18-405, AND 35-18-501, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Execution constituting affirmation -- penalty -- warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of perjury, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

Section 2. Section 30-13-203, MCA, is amended to read:

"30-13-203. Application for registration of assumed business name. All persons transacting business in this state under an assumed business name shall execute~~, verify,~~ and file with the secretary of state, on forms furnished by the secretary of state, an application for registration of the assumed business name, including but not limited to the following information:

(1) the name and address, including the street name and number, of applicant;

(2) the complete name of proposed assumed business name;

(3) date of first use, in commerce, of assumed business name;

(4) description of business transacted under such name; and

(5) the name of county or counties in which business is being transacted."

Section 3. Section 30-13-207, MCA, is amended to read:

"30-13-207. Application for renewal of assumed business name. Duplicate originals of application for

renewal of registration of an assumed business name shall be executed~~, verified~~, and delivered to the secretary of state. The application shall include but not be limited to the following information:

(1) the complete assumed business name;

(2) the name and address, including street name and number, if any, of applicant;

(3) description of business transacted; and

(4) the name of the county or counties in which business is being transacted."

Section 4. Section 30-13-212, MCA, is amended to read:

"30-13-212. Filing application for reservation of assumed business name -- issuance of certificate thereon. (1) Duplicate originals of application for reservation of an assumed business name, duly executed ~~and verified~~ by the applicant, shall be delivered to the secretary of state. If the secretary of state finds the application complies with the provisions of this part, he shall, when all fees have been paid as provided in this part:

(a) endorse on each of the duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of the duplicate originals in his office;

(c) issue a certificate of reservation, to which he shall affix the other duplicate original.

(2) The certificate of reservation, together with the duplicate original of application for reservation of an assumed business name affixed thereto by the secretary of state, shall be returned to the applicant."

NEW SECTION. Section 5. Execution constituting affirmation -- penalty -- warning. (1) The execution of any document required to be filed with the secretary of state under this part constitutes an affirmation, under the penalties of perjury, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this part.

Section 6. Section 30-13-311, MCA, is amended to read:

"30-13-311. Application for registration. (1) Subject to the limitations set forth in this part, a person who adopts and uses a mark in this state may file in the office of secretary of state, on a form to be furnished by the secretary of state, an application for registration of that mark setting forth information including but not limited to the following:

(a) the name and business address of the person applying for such registration and, if a corporation, the state of incorporation;

(b) the essential feature of the mark to be

registered;

(c) the goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall;

(d) the date when the mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business;

(e) a statement that the mark is presently in use in this state by the applicant; and

(f) a statement that the applicant is the owner of the mark and that no other person has the right to use the mark in this state either in the identical form thereof or in a form that so nearly resembles it that it might be calculated to deceive or might be mistaken for it.

(2) The application must be signed ~~and verified~~ by ~~affidavit of~~ the applicant or a member of the firm or an officer of the corporation or association applying.

(3) The application must be accompanied by a specimen or facsimile of such mark in duplicate.

(4) The application for registration must be accompanied by a filing fee of $20, payable to the secretary of state."

Section 7. Section 30-13-313, MCA, is amended to read:

"30-13-313. Duration and renewal. (1) Registration of

a mark under this part is effective for a term of 10 years from the date of registration and, upon application filed within 6 months prior to the expiration of such term, the registration may be renewed for another 10 years.

(2) An application for renewal of mark registration must be delivered to the secretary of state and shall set forth information including but not limited to the following:

(a) the name and business address of the applicant;

(b) a description of the mark; and

(c) a statement that the mark is still in use by the applicant in this state.

(3) The application for renewal of mark registration must be signed ~~and verified by affidavit of~~ the applicant.

(4) The application for renewal of mark registration must be accompanied by a filing fee of $20, payable to the secretary of state."

Section 8. Section 30-13-318, MCA, is amended to read:

"30-13-318. Cancellation. The secretary of state shall cancel from the register:

(1) after July 1, 1981, each registration made prior to July 1, 1980, that is more than 10 years old and not renewed in accordance with this part;

(2) any registration ~~concerning~~ for which ~~the secretary of state~~ he receives a ~~voluntary~~ written request

for cancellation ~~from~~, signed and verified by the registrant or the assignee of record and accompanied by fees as prescribed in this part;

(3) each registration granted under this part and not renewed in accordance with the provisions of this part;

(4) any registration concerning which a court of competent jurisdiction finds that:

(a) the registered mark has been abandoned;

(b) the registrant is not the owner of the mark;

(c) the registration was granted improperly;

(d) the registration was obtained fraudulently;

(e) the registered mark is so similar to a mark currently registered by another person in the United States patent and trademark office prior to the filing date of the application for registration under this part as to be likely to cause confusion or mistake or to deceive. However, if the registrant proves that he is the owner of a concurrent registration of his mark in the United States patent and trademark office covering an area including this state, the registration under this part may not be canceled.

(5) a registration ordered canceled by a court of competent jurisdiction on any grounds."

Section 9. Section 35-1-201, MCA, is amended to read:

"35-1-201. Incorporators. One or more persons of legal age or a domestic or foreign corporation may act as

incorporator or incorporators of a corporation by signing, ~~acknowledging,~~ and delivering in duplicate to the secretary of state articles of incorporation for such corporation."

Section 10. Section 35-1-209, MCA, is amended to read:

"35-1-209. Articles of amendment -- contents. The articles of amendment shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary ~~and verified by one of the officers signing such articles~~ and shall set forth:

(1) the name of the corporation;

(2) the amendments so adopted;

(3) the date of the adoption of the amendment by the shareholders or the board of directors when no shares have been issued;

(4) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(5) the number of shares voted for and against such amendments, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively, or, if no shares have been issued, a statement to that effect;

(6) if such amendment provides for an exchange, reclassification, or cancellation of issued shares and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected."

Section 11. Section 35-1-212, MCA, is amended to read:

"35-1-212. Amendment of articles of incorporation in reorganization proceedings. (1) Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended in the manner provided in this section in as many respects as may be necessary to carry out the plan and put it into effect, so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

(2) In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

(a) change the corporate name, period of duration, or corporate purposes of the corporation;

(b) repeal, alter, or amend the bylaws of the corporation;

(c) change the aggregate number of shares or shares of any class which the corporation has authority to issue;

(d) change the preferences, limitations, and relative rights in respect of all or any part of the shares of the corporation and classify, reclassify, or cancel all or any part thereof, whether issued or unissued;

(e) authorize the issuance of bonds, debentures, or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and

(f) constitute or reconstitute and classify or reclassify the board of directors of the corporation and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

(3) Amendments to the articles of incorporation pursuant to this section shall be made in the following manner:

(a) Articles of amendment approved by decree or order of such court shall be executed ~~and verified~~ in duplicate by such person or persons as the court shall designate or appoint for the purpose and shall set forth the name of the

corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered, and a statement that such decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.

(b) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(i) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(ii) file one of such duplicate originals in his office;

(iii) issue a certificate of amendment to which he shall affix the other duplicate original.

(c) The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

(4) The amendment becomes effective upon the issuance

of the certificate of amendment by the secretary of state or on such later date, not more than 30 days subsequent to the filing thereof with the secretary of state, as may be provided for in the articles of amendment, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation."

Section 12. Section 35-1-213, MCA, is amended to read:

"35-1-213. Restated articles of incorporation. (1) A corporation may, by action taken in the same manner as required for amendment of articles of incorporation, adopt restated articles of incorporation. The restated articles of incorporation may contain any changes in the articles of incorporation that could be made by amendment regularly adopted. Adoption of restated articles of incorporation containing any such changes shall have the effect of amending the existing articles of incorporation to conform to the restated articles of incorporation without further action of the board of directors or shareholders. Restated articles of incorporation shall contain a statement that they supersede the theretofore existing articles of incorporation and amendments thereto. Restated articles of incorporation shall contain all the statements required by this chapter to be included in original articles of

incorporation except that:

(a) the restated articles of incorporation shall set forth the amount of its stated capital at the time of the adoption of the restated articles of incorporation;

(b) in lieu of setting forth the address of the initial registered office and the name of the initial registered agent at such address, there shall be set forth the address, including street and number, if any, of the registered office and the name of the registered agent at such address at the time of the adoption of the restated articles of incorporation; and

(c) no statement need be made with respect to the names and addresses of directors constituting the initial board of directors or the names and addresses of the incorporators.

(2) Restated articles of incorporation when executed and filed in the manner prescribed in this chapter for articles of amendment shall supersede the theretofore existing articles of incorporation and amendments thereto.

(3) The restated articles of incorporation when filed shall be accompanied by a statement, executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary ~~and verified by one of the officers signing such statement~~, setting forth the following:

(a) the name of the corporation;

(b) the date of the adoption of the restated articles of incorporation by the shareholders;

(c) the number of shares outstanding and the number of shares entitled to vote thereon and, if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;

(d) the number of shares voted for and against the restated articles of incorporation, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against the restated articles of incorporation, respectively;

(e) if the restated articles of incorporation provide for an exchange, reclassification, or cancellation of issued shares and, if the manner in which the same shall be effected is not set forth in the restated articles of incorporation, then a statement of the manner in which the same shall be effected."

Section 13. Section 35-1-306, MCA, is amended to read:

"35-1-306. Change of registered office or registered agent. (1) A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address of its then registered office;

(c) if the address of its registered office is changed, the address to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent is changed, the name of its successor registered agent;

(f) that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer ~~thereof, verified by him,~~ and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this chapter, he shall, when all fees have been paid as in this chapter prescribed, file such statement in his office. Upon filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, is effective.

(3) A registered agent of a corporation may resign as registered agent upon filing a written notice of resignation, executed in duplicate, with the secretary of

state, who shall immediately mail a copy thereof to the corporation at its registered office. The appointment of the agent shall terminate 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation."

Section 14. Section 35-1-412, MCA, is amended to read:

"35-1-412. Penalty ~~imposed upon officers and directors~~ for signing false document. ~~Each officer and director of a corporation, domestic or foreign, who signs any articles, statement, report, application, or other document filed with the secretary of state which is known to such officer or director to be false in any material respect shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.~~ (1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of perjury, by each person

executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the printing of a warning to this effect on each form prescribed by him under this chapter."

Section 15. Section 35-1-602, MCA, is amended to read:

"35-1-602. Issuance of shares of preferred or special classes in series -- filing of statement. (1) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences as to which there may be variations between different series:

(a) the rate of dividend;

(b) whether shares may be redeemed and, if so, the redemption price and the terms and conditions of redemption;

(c) the amount payable upon shares in event of voluntary and involuntary liquidation;

(d) sinking fund provisions, if any, for the redemption or purchase of shares;

(e) the terms and conditions, if any, on which shares may be converted;

(f) voting rights, if any.

(4) If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

(5) In order for the board of directors to establish a series where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof or so much thereof as shall not be fixed and determined by the articles of incorporation.

(6) Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of

state a statement setting forth:

(a) the name of the corporation;

(b) a copy of the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof;

(c) the date of adoption of such resolution;

(d) that such resolution was duly adopted by the board of directors.

(5) Such statement shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary ~~and verified by one of the officers signing such statement~~ and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) return the other duplicate original to the corporation or its representative.

(6) Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and

preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation."

Section 16. Section 35-1-612, MCA, is amended to read:

"35-1-612. Power of corporation to acquire its own shares. (1) A corporation shall have the power to acquire its own shares. All of its own shares acquired by a corporation, upon acquisition, constitute authorized but unissued shares unless the articles of incorporation provide that they may not be reissued, in which case the authorized shares shall be reduced by the number of shares acquired.

(2) If the number of authorized shares is reduced by an acquisition, the corporation shall, no later than the time it files its next annual report under this chapter with the secretary of state, file a statement of cancellation showing the reduction in the authorized shares. The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary ~~and verified by one of the officers signing such statement~~ and shall set forth:

(a) the name of the corporation;

(b) the number of acquired shares canceled, itemized by classes and series; and

(c) the aggregate number of authorized shares, itemized by classes and series, after giving effect to such cancellation.

(3) Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees and franchise taxes have been paid as prescribed in this chapter:

(a) endorse on each of such duplicate originals the word "Filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) return the other duplicate original to the corporation or its representative."

Section 17. Section 35-1-804, MCA, is amended to read:

"35-1-804. Articles of merger, consolidation, or exchange -- contents -- filing. (1) Upon receiving the approvals required by 35-1-301 and 35-1-803, articles of merger, consolidation, or exchange shall be executed in duplicate by each corporation by its president or a vice-president and by its secretary or an assistant secretary ~~and verified by one of the officers of each corporation signing such articles~~ and shall set forth:

(a) the plan of merger, consolidation, or exchange;

(b) as to each corporation, either:

(i) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the

designation and number of outstanding shares of each such class; or

(ii) a statement that the vote of shareholders is not required by virtue of 35-1-803(5); and

(c) as to each corporation the approval of whose shareholders is required, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

(2) Duplicate originals of the articles of merger, consolidation, or exchange shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as prescribed in this chapter:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of merger, consolidation, or exchange to which he shall affix the other duplicate original.

(3) The certificate of merger, consolidation, or exchange, together with the duplicate original of the

articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving, new, or acquiring corporation, as the case may be, or its representative."

Section 18. Section 35-1-805, MCA, is amended to read:

"35-1-805. Merger of subsidiary without shareholder approval. (1) Any corporation owning at least 95% of the outstanding shares of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation. Its board of directors shall, by resolution, approve a plan of merger setting forth:

(a) the name of the subsidiary corporation and the name of the corporation owning at least 95% of its shares, which is hereinafter designated as the surviving corporation;

(b) the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or of any other corporation or, in whole or in part, into cash or other property.

(2) A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

(3) Articles of merger shall be executed in duplicate by the surviving corporation by its president or a

vice-president and by its secretary or an assistant secretary ~~and--verified-by-one-of-its-officers-signing-such articles~~ and shall set forth:

(a) the plan of merger;

(b) the number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and

(c) the date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

(4) On and after the 30th day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office; and

(c) issue a certificate of merger to which he shall affix the other duplicate original.

(5) The certificate of merger, together with the

duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative."

Section 19. Section 35-1-901, MCA, is amended to read:

"35-1-901. Voluntary dissolution by incorporators or initial board of directors -- filing of articles of dissolution. A corporation which has not commenced business and which has not issued any shares may be voluntarily dissolved by its incorporators at any time in the following manner:

(1) Articles of dissolution shall be executed in duplicate by a majority of the incorporators or initial board of directors ~~and verified by them~~ and shall set forth:

(a) the name of the corporation;

(b) the date of issuance of its certificate of incorporation;

(c) that none of its shares has been issued;

(d) that the corporation has not commenced business;

(e) that the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;

(f) that no debts of the corporation remain unpaid;

(g) that a majority of the incorporators elect that the corporation be dissolved.

(2) Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this chapter prescribed:

(a) endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue a certificate of dissolution to which he shall affix the other duplicate original.

(3) The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators, the board of directors, or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease."

Section 20. Section 35-1-902, MCA, is amended to read:

"35-1-902. Voluntary dissolution by consent of shareholders -- statement of intent. (1) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(2) Upon the execution of such written consent, a

statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and ~~verified by one of the officers signing such statement, which statement~~ shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation;

(e) a statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized."

Section 21. Section 35-1-903, MCA, is amended to read:

"35-1-903. Voluntary dissolution by act of corporation -- statement of intent. A corporation may be dissolved by the act of the corporation when authorized in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting.

(2) Written notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders and, whether the meeting be an annual or special meeting, shall state that the purpose or one of the purposes of such meeting is to consider the advisability of dissolving the corporation.

(3) At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of the corporation entitled to vote thereon unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and ~~verified by one of the officers signing such statement, which statement~~ shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;

(e) the number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class;

(f) the number of shares voted for and against the resolution, respectively, and if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively."

Section 22. Section 35-1-907, MCA, is amended to read:

"35-1-907. Revocation of voluntary dissolution proceedings by consent of shareholders. (1) By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(2) Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings

shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and ~~verified--by--one--of--the--officers signing-such-statement,-which-statement~~ shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings;

(e) that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized."

Section 23. Section 35-1-908, MCA, is amended to read:

"35-1-908. Revocation of voluntary dissolution proceedings by act of corporation. By the act of the corporation, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked and directing that the question of such revocation

be submitted to a vote at a special meeting of shareholders.

(2) Written notice stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders.

(3) At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon.

(4) Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and ~~verified by one of the officers signing such statement, which statement~~ shall set forth:

(a) the name of the corporation;

(b) the names and respective addresses of its officers;

(c) the names and respective addresses of its directors;

(d) a copy of the resolution adopted by the

shareholders revoking the voluntary dissolution proceedings;

(e) the number of shares outstanding;

(f) the number of shares voted for and against the resolution, respectively."

Section 24. Section 35-1-911, MCA, is amended to read:

"35-1-911. Articles of dissolution. If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged or adequate provision has been made therefor and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary and ~~verified by one of the officers signing such statement, which statement~~ shall set forth:

(1) the name of the corporation;

(2) that the secretary of state has theretofore filed a statement of intent to dissolve the corporation and the date on which such statement was filed;

(3) that all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;

(4) that all the remaining property and assets of the corporation have been distributed among its shareholders in

accordance with their respective rights and interests;

(5) that there are no suits pending against the corporation in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit."

Section 25. Section 35-1-1008, MCA, is amended to read:

"35-1-1008. Application for a certificate of authority. (1) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) if the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;

(c) the date of incorporation and the period of duration of the corporation;

(d) the address, including street and number, if any, of the principal office of the corporation in the state or country under the laws of which it is incorporated;

(e) the address of the registered office of the

corporation in this state and the name of its registered agent in this state at such address;

(f) the purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;

(g) the names and respective addresses of the directors and officers of the corporation;

(h) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes and series, if any, within a class;

(i) a statement of the aggregate number of issued shares, itemized by classes and series, if any, within a class; and

(j) such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine and assess the fees payable.

(2) Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice-president and by its secretary or an assistant secretary ~~and--verified-by-one-of-the-officers-signing-such application~~."

Section 26. Section 35-1-1013, MCA, is amended to

read:

"35-1-1013. Change of registered office or registered agent of foreign corporation. (1) A foreign corporation authorized to transact business in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) the name of the corporation;

(b) the address, including street and number, if any, of its then registered office;

(c) if the address of its registered office be changed, the address, including street and number, if any, to which the registered office is to be changed;

(d) the name of its then registered agent;

(e) if its registered agent be changed, the name of its successor registered agent;

(f) that the address, including street and number, if any, of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) that such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed by the corporation by its president or a vice-president and ~~verified--by-him~~ and delivered to the secretary of state. If

the secretary of state finds that such statement conforms to the provisions of this chapter, he shall file such statement in his office and, upon such filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, shall become effective.

(3) Any registered agent of a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to (1)(e) or (1)(g) and must recite that a copy of the statement has been mailed to each such corporation."

Section 27. Section 35-1-1017, MCA, is amended to read:

"35-1-1017. Withdrawal of foreign corporation. (1) A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, the foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) that the corporation is not transacting business in this state;

(c) that the corporation surrenders its authority to transact business in this state;

(d) that the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service thereof on the secretary of state;

(e) a post-office address, including street and number, if any, to which the secretary of state may mail a copy of any process against the corporation that may be served on him;

(f) a statement of the aggregate number of shares which the corporation has authority to issue, itemized by class and series, if any, within each class, as of the date of such application;

(g) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class, as of the date of such application;

(h) that all taxes imposed on the corporation by Title 15 have been paid, supported by a certificate by the department of revenue to be attached to said application to the effect that the department is satisfied from the available evidence that all such taxes imposed have been paid. The issuance of such certificate does not relieve the corporation from liability for any taxes, penalties, or interest due the state of Montana; and

(i) such additional information as may be necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees or taxes payable by such foreign corporation as prescribed by this chapter.

(2) The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed for the corporation by its president or a vice-president and by its secretary or an assistant secretary ~~and verified by one of the officers signing the application~~ or, if the corporation is in the hands of a

receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee ~~and verified by him.~~"

Section 28. Section 35-1-1101, MCA, is amended to read:

"35-1-1101. Annual report of domestic and foreign corporations. (1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall file, within the time prescribed by this chapter, an annual report setting forth:

(a) the name of the corporation and the state or country under the laws of which it is incorporated;

(b) the address of the registered office of the corporation in this state and the name of its registered agent in this state at such address, including street and number, if any, and, in the case of a foreign corporation, the address, including street and number, if any, of its principal office in the state or country under the laws of which it is incorporated;

(c) a brief statement of the character of the business in which the corporation is actually engaged in this state;

(d) the names and respective addresses, including street and number, if any, of the directors and officers of the corporation;

(e) a statement of the aggregate number of shares

which the corporation has authority to issue, itemized by class and series, if any, within each class; and

(f) a statement of the aggregate number of issued shares, itemized by class and series, if any, within each class.

(2) In addition thereto, every foreign corporation shall include a statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the 12 months ended on December 31 preceding the date herein provided for the filing of such report and the gross amount thereof transacted by the corporation at or from places of business in this state. If on December 31 preceding the time herein provided for the filing of such report, the corporation has not been authorized to transact business in this state for a period of 12 months, the statement with respect to business transacted must be furnished for the period between the date of its authorization to transact business in this state and such December 31. If all the property of the corporation is located in this state and all of its business is transacted at or from places of business in this state, then the information required by this subsection need not be set

forth in such report.

(3) Such annual report must be on forms prescribed by the secretary of state. The information therein contained must be given as of the date of the execution of the report. It must be executed by the corporation by its president, a vice-president, secretary, an assistant secretary, or treasurer ~~and verified by the officer executing the report~~, or if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation ~~and verified~~ by such receiver or trustee."

Section 29. Section 35-2-413, MCA, is amended to read:

"35-2-413. Penalty ~~imposed upon directors and officers~~ for signing false document. ~~Each director and officer of a corporation, domestic or foreign, who signs any articles, statement, report, application, or other document filed with the secretary of state which is known to such officer or director to be false in any material respect shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding $500.~~ (1) The execution of any document required to be filed with the secretary of state under this chapter constitutes an affirmation, under the penalties of perjury, by each person executing the document that the facts stated therein are true.

(2) The secretary of state shall provide for the

printing of a warning to this effect on each form prescribed by him under this chapter."

Section 30. Section 35-2-1201, MCA, is amended to read:

"35-2-1201. Reinstatement of corporation whose term has expired. (1) The secretary of state may:

(a) reinstate any corporation which has expired under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state in duplicate an application, executed ~~and verified~~ by a person who was an officer or director at the time of expiration, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the

corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement;

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the expiration."

Section 31. Section 35-6-201, MCA, is amended to read:

"35-6-201. Reinstatement of dissolved corporation. (1)

The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state in duplicate an application, executed ~~and verified~~ by a person who was an officer or director at the time of dissolution, setting forth:

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 35-1-921 or 35-2-711;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 15 have

been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement; and

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution."

Section 32. Section 35-15-201, MCA, is amended to read:

"35-15-201. Incorporation. (1) Whenever any number of persons, not less than three or more than seven, may desire to become incorporated as a cooperative association for the purpose of trade or of prosecuting any branch of industry or

the purchase and distribution of commodities for consumption or in the borrowing or lending of money among members for industrial purposes, they shall make a statement to that effect under their hands~~, duly acknowledged by a notary public in the manner provided for the acknowledgment of deeds~~ setting forth:

(a) the name of the proposed corporation;

(b) its capital stock;

(c) its location;

(d) the duration of the association; and

(e) the particular branch or branches of industry which they intend to prosecute.

(2) The statement shall be filed in the office of the secretary of state as the articles of incorporation of the association. The secretary of state shall thereupon issue to such persons a license as commissioners to open books for subscription to the capital stock of such corporation, at such time and place as they may determine, for which he shall receive the fee of $20."

Section 33. Section 35-15-204, MCA, is amended to read:

"35-15-204. Issuance of certificate of organization -- effect. (1) The commissioners shall make a full report of their proceedings, including therein a copy of the notice provided for in the preceding section, a copy of the

subscription list, a copy of the bylaws adopted by the association, and the names of the directors elected and their respective terms of office, which report shall be ~~sworn--to~~ executed by at least a majority of the commissioners and shall be filed in the office of the secretary of state. The secretary of state shall thereupon issue a certificate of the complete organization of the association, making a part thereof a copy of all papers filed in his office in and about the organization and duly authenticated under his hand and seal of the state for which he shall receive the sum of $20, and thereupon a certified copy of said certificate shall be filed in the office of the county clerk in which the principal office of the association is located.

(2) Upon the filing of said certified copy, the association shall be deemed to be fully organized and may proceed to business."

Section 34. Section 35-15-205, MCA, is amended to read:

"35-15-205. Amendment of articles of incorporation. At any time after the filing of the certificate of complete organization, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall first be approved by two-thirds of the directors and then adopted by a vote of not less than two-thirds of those stockholders

voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A certificate setting forth such amendment shall be executed ~~and--acknowledged~~ on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. Such certificate shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation for which he shall receive the sum of $10, and thereupon a certified copy of such certificate shall be filed in the office of the county clerk in which the principal office of the association is located."

Section 35. Section 35-15-305, MCA, is amended to read:

"35-15-305. Filing required to have benefit of certain provisions. All cooperative corporations, companies, or associations organized before March 5, 1915, and doing business under prior statutes or which have attempted to so organize and do business shall have the benefit of 35-15-303, 35-15-411, and 35-15-412 and be bound thereby on filing with the secretary of state a written declaration, ~~signed-and-sworn-to~~ executed by the president and secretary, to the effect that said cooperative company or association has by a majority vote of its stockholders decided to accept

the benefits of and to be bound by such provisions."

Section 36. Section 35-15-504, MCA, is amended to read:

"35-15-504. Filing of documents of merger or consolidation -- effective date. (1) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed ~~and--acknowledged~~ by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation shall become effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation shall become effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger."

Section 37. Section 35-17-202, MCA, is amended to

read:

"35-17-202. Articles of incorporation -- contents -- filing -- articles or copies as prima facie evidence. (1) Each association formed under this chapter must prepare and file articles of incorporation setting forth:

(a) the name of the association;

(b) the purposes for which it is formed;

(c) the place where its principal business will be transacted;

(d) the term for which it is to exist, which may be perpetual;

(e) the number of its directors or trustees, which shall not be less than 5 or more than 13 and the names and residences of those who are appointed for the first 3 months and until their successors are elected and qualified;

(f) if organized without capital stock, whether the property rights and interest of each member shall be equal or unequal, and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed. The association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(2) The articles must be subscribed by the

incorporators and ~~acknowledged--by--one--of-them-before-an officer-authorized-by-the-law-of--this--state--to--take--and certify--acknowledgments--of-deeds-and-conveyances-and~~ shall be filed in accordance with the provisions of the general corporation law of this state and when so filed the articles of incorporation or certified copies thereof shall be received in all the courts of this state and other places as prima facie evidence of the facts contained therein and of the due incorporation of such association."

Section 38. Section 35-17-203, MCA, is amended to read:

"35-17-203. Amendments to articles of incorporation. At any time after filing, the articles of incorporation may be amended. Any amendment of the articles of incorporation shall be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the stockholders called for that purpose. A statement setting forth the amendment shall be executed ~~and-acknowledged~~ on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. The statement shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation. A certified

copy of such certificate shall be filed in the office of the county clerk for the county in which the principal office of the association is located."

Section 39. Section 35-17-204, MCA, is amended to read:

"35-17-204. Adoption of chapter by existing associations. Any corporation or association organized under statutes existing prior to March 5, 1921, may, by a majority vote of its stockholders or members, be brought under the provisions of this chapter by limiting its membership and adopting the other restrictions as provided herein. It shall make out in duplicate a statement signed ~~and-sworn--to~~ by its directors, upon forms supplied by the secretary of state, to the effect that the corporation or association has by a majority vote of its stockholders or members decided to accept the benefits and be bound by provisions of this chapter. Articles of incorporation shall be filed as required in 35-17-202, except that they shall be signed by the members of the board of directors. The filing fee shall be the same as for filing an amendment to articles of incorporation."

Section 40. Section 35-17-504, MCA, is amended to read:

"35-17-504. Filing of documents of merger or consolidation -- effective date. (1) Within 30 days after

the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed ~~and acknowledged~~ by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located, if the office is in Montana, and with the Montana secretary of state.

(2) If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located."

Section 41. Section 35-18-203, MCA, is amended to read:

"35-18-203. Articles of incorporation. (1) The articles of incorporation of a cooperative shall recite in the caption that they are executed pursuant to this chapter, shall be signed ~~and acknowledged~~ by each of the incorporators, and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the names and addresses of the incorporators;

(d) the names and addresses of the persons who shall constitute its first board of trustees; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) Such articles of incorporation shall be submitted to the secretary of state for filing as provided in this chapter.

(3) It shall not be necessary to set forth in the articles of incorporation of a cooperative the purpose for which it is organized or any of the corporate powers vested in a cooperative under this chapter."

Section 42. Section 35-18-204, MCA, is amended to read:

"35-18-204. Amendment of articles of incorporation. A cooperative may amend its articles of incorporation by complying with the following requirements:

(1) The proposed amendment shall be first approved by the board of trustees and shall then be submitted to a vote of the members at any annual or special meeting thereof, the notice of which shall set forth the proposed amendment. The proposed amendment, with such changes as the members shall choose to make therein, shall be deemed to be approved on the affirmative vote of not less than two-thirds of those

members voting thereon at such meeting.

(2) Upon such approval by the members, articles of amendment shall be executed ~~and acknowledged~~ on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. The articles of amendment shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state; and

(d) the amendment to its articles of incorporation.

(3) The president or vice-president executing such articles of amendment shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with.

(4) Such articles of amendment and affidavit shall be submitted to the secretary of state for filing as provided in this chapter."

Section 43. Section 35-18-205, MCA, is amended to read:

"35-18-205. Change of principal office without amendment. A cooperative may, without amending its articles of incorporation, upon authorization of its board of

trustees, change the location of its principal office by filing a certificate of change of principal office executed ~~and acknowledged~~ by its president or vice-president, under its seal attested by its secretary, in the office of the secretary of state and also in each county office in which its articles of incorporation or any prior certificate of change of principal office of such cooperative has been filed and paying the fees prescribed in this chapter in connection therewith. Such cooperative shall also, within 30 days after the filing of such certificate of change of principal office in any county office, file therein certified copies of its articles of incorporation and all amendments thereto, if not already on file therein."

Section 44. Section 35-18-206, MCA, is amended to read:

"35-18-206. Existing corporations — reorganization under this chapter -- articles of conversion. Any corporation organized under the laws of this state for the purpose, among others, of supplying electric energy or telephone service in rural areas may become subject to this chapter with the same effect as if originally organized under this chapter by complying with the following requirements:

(1) The proposition for the conversion of such corporation into a cooperative under this chapter and

proposed articles of conversion to give effect thereto shall be first approved by the board of trustees or the board of directors, as the case may be, of such corporation. The proposed articles of conversion shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the corporation prior to its conversion into a cooperative under this chapter;

(b) the address of the principal office of such corporation;

(c) the date of the filing of its articles of incorporation in the office of the secretary of state;

(d) the statute or statutes under which such corporation was organized;

(e) the name assumed by such corporation;

(f) a statement that such corporation elects to become a cooperative, nonprofit, membership corporation subject to this chapter;

(g) the manner and basis of converting either memberships in or shares of stock of such corporation into memberships therein after completion of the conversion; and

(h) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of its business and affairs.

(2) The proposition for the conversion of such

corporation into a cooperative under this chapter and the proposed articles of conversion approved by the board of trustees or board of directors, as the case may be, of such corporation shall then be submitted to a vote of the members or stockholders, as the case may be, of such corporation at any duly held annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed conversion. The proposition for the conversion of such corporation into a cooperative under this chapter and the proposed articles of conversion, with such amendments thereto as the members or stockholders of such corporation shall choose to make therein, shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of such corporation voting thereon at such meeting or, if such corporation is a stock corporation, upon the affirmative vote of the holders of not less than two-thirds of the capital stock of such corporation represented at such meeting.

(3) Upon such approval by the members or stockholders of such corporation, articles of conversion in the form approved by such members or stockholders of such corporation shall be executed ~~and--acknowledged~~ on behalf of such corporation by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The president or

vice-president executing such articles of conversion on behalf of such corporation shall also make and annex thereto an affidavit stating that the provisions of this section with respect to the approval of its trustees or directors and its members or stockholders of the proposition for the conversion of such corporation into a cooperative under this chapter and such articles of conversion were duly complied with.

(4) Such articles of conversion and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(5) The term "articles of incorporation" as used in this chapter shall be deemed to include the articles of conversion of a converted corporation."

Section 45. Section 35-18-401, MCA, is amended to read:

"35-18-401. Procedure for merger. Any one or more cooperatives, each of which is hereinafter designated a "merging cooperative", may merge into another cooperative, hereinafter designated the "surviving cooperative" by complying with the following requirements:

(1) The proposition for the merger of the merging cooperatives into the surviving cooperative and proposed articles of merger to give effect thereto shall be first approved by the board of trustees of each merging

cooperative and by the board of trustees of the surviving cooperative. The proposed articles of merger shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each merging cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the surviving cooperative and the address of its principal office;

(c) a statement that the merging cooperatives elect to be merged into the surviving cooperative;

(d) the terms and conditions of the merger and the mode of carrying the same into effect, including the manner and basis of converting the memberships in the merging cooperative or cooperatives into memberships in the surviving cooperative and the issuance of certificates of membership in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the surviving cooperative.

(2) The proposition for the merger of the merging cooperatives into the surviving cooperative and the proposed articles of merger approved by the board of trustees of the respective cooperatives which are parties to such proposed

merger shall then be submitted to a vote of the members of each such cooperative at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed merger. The proposed merger and the proposed articles of merger shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective cooperatives parties to the proposed merger, articles of merger in the form approved shall be executed ~~and acknowledged~~ on behalf of each such cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each cooperative executing such articles of merger shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of merger and affidavits shall be submitted to the secretary of state for filing as provided in this chapter."

Section 46. Section 35-18-402, MCA, is amended to read:

"35-18-402. Procedure for consolidation. Any two or more cooperatives, each of which is hereinafter designated a

"consolidating cooperative", may consolidate into a new cooperative, hereinafter designated the "new cooperative" by complying with the following requirements:

(1) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and proposed articles of consolidation to give effect thereto shall be first approved by the board of trustees of each consolidating cooperative. The proposed articles of consolidation shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of each consolidating cooperative, the address of its principal office, and the date of the filing of its articles of incorporation in the office of the secretary of state;

(b) the name of the new cooperative and the address of its principal office;

(c) the names and addresses of the persons who shall constitute the first board of trustees of the new cooperative;

(d) the terms and conditions of the consolidation and the mode of carrying the same into effect, including the manner and basis of converting memberships in each consolidating cooperative into memberships in the new cooperative and the issuance of certificates of membersnips in respect of such converted memberships; and

(e) any provisions not inconsistent with this chapter deemed necessary or advisable for the conduct of the business and affairs of the new cooperative.

(2) The proposition for the consolidation of the consolidating cooperatives into the new cooperative and the proposed articles of consolidation approved by the board of trustees of each consolidating cooperative shall then be submitted to a vote of the members thereof at any annual or special meeting thereof, the notice of which shall set forth full particulars concerning the proposed consolidation. The proposed consolidation and the proposed articles of consolidation shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members of each consolidating cooperative voting thereon at such meeting.

(3) Upon such approval by the members of the respective consolidating cooperatives, articles of consolidation in the form approved shall be executed and ~~acknowledged~~ on behalf of each consolidating cooperative by its president or vice-president and its seal shall be affixed thereto and attested by its secretary. The president or vice-president of each consolidating cooperative executing such articles of consolidation shall also make and annex thereto an affidavit stating that the provisions of this section were duly complied with by such cooperative.

(4) Such articles of consolidation and affidavits shall be submitted to the secretary of state for filing as provided in this chapter."

Section 47. Section 35-18-404, MCA, is amended to read:

"35-18-404. Dissolution of cooperative which has not commenced business. (1) A cooperative which has not commenced business may dissolve voluntarily by delivering to the secretary of state articles of dissolution, executed and ~~acknowledged~~ on behalf of the cooperative by a majority of the incorporators, which shall state:

(a) the name of the cooperative;

(b) the address of its principal office;

(c) the date of its incorporation;

(d) that the cooperative has not commenced business;

(e) that the amount, if any, actually paid in on account of membership fees, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto and that all easements shall have been released to the grantors;

(f) that no debt of the cooperative remains unpaid; and

(g) that a majority of the incorporators elect that the cooperative be dissolved.

(2) Such articles of dissolution shall be submitted to

the secretary of state for filing as provided in this chapter."

Section 48. Section 35-18-405, MCA, is amended to read:

"35-18-405. Dissolution and winding up of cooperative which has commenced business. A cooperative which has commenced business may dissolve voluntarily and wind up its affairs in the following manner:

(1) The board of trustees shall first recommend that the cooperative be dissolved voluntarily and thereafter the proposition that the cooperative be dissolved shall be submitted to the members of the cooperative at any annual or special meeting, the notice of which shall set forth such proposition. The proposed voluntary dissolution shall be deemed to be approved upon the affirmative vote of not less than two-thirds of those members voting thereon at such meeting.

(2) Upon such approval, a certificate of election to dissolve, hereinafter designated the "certificate", shall be executed ~~and acknowledged~~ on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary or assistant secretary. The certificate shall state the name of the cooperative, the address of its principal office, the names and addresses of its trustees, and the total number of

members who voted for and against the voluntary dissolution of the cooperative. The president or vice-president executing the certificate shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such certificate and affidavit shall be submitted to the secretary of state for filing as provided in this chapter.

(3) Upon the filing of the certificate and affidavit by the secretary of state, the cooperative shall cease to carry on its business except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until articles of dissolution have been filed by the secretary of state.

(4) After the filing of the certificate and affidavit by the secretary of state, the board of trustees shall immediately cause notice of the winding up proceedings to be mailed to each known creditor and claimant and to be published once a week for 2 successive weeks in a newspaper of general circulation in the county in which the principal office of the cooperative is located.

(5) The board of trustees shall have full power to wind up and settle the affairs of the cooperative and shall proceed to collect the debts owing to the cooperative, convey and dispose of its property and assets, pay, satisfy, and discharge its debts, obligations, and liabilities and do

all other things required to liquidate its business and affairs and after paying or adequately providing for the payment of all its debts, obligations, and liabilities shall distribute the remainder of its property and assets among its members in proportion to the aggregate patronage of each such member during the 7 years next preceding the date of such filing of the certificate or, if the cooperative shall not have been in existence for such period, during the period of its existence.

(6) When all debts, liabilities, and obligations of the cooperative have been paid and discharged or adequate provision shall have been made therefor and all of the remaining property and assets of the cooperative shall have been distributed to the members pursuant to the provisions of this section, the board of trustees shall authorize the execution of articles of dissolution which shall thereupon be executed ~~and acknowledged~~ on behalf of the cooperative by its president or vice-president and its corporate seal shall be affixed thereto and attested by its secretary. Such articles of dissolution shall recite in the caption that they are executed pursuant to this chapter and shall state:

(a) the name of the cooperative;

(b) the address of the principal office of the cooperative;

(c) that the cooperative has heretofore delivered to

the secretary of state a certificate of election to dissolve and the date on which the certificate was filed by the secretary of state in the records of his office;

(d) that all debts, obligations, and liabilities of the cooperative have been paid and discharged or that adequate provision has been made therefor;

(e) that all the remaining property and assets of the cooperative have been distributed among the members in accordance with the provisions of this section; and

(f) that there are no actions or suits pending against the cooperative. The president or vice-president executing the articles of dissolution shall also make and annex thereto an affidavit stating that the provisions of this subsection were duly complied with. Such articles of dissolution and affidavit, accompanied by proof of the publication required in this subsection, shall be submitted to the secretary of state for filing as provided in this chapter."

Section 49. Section 35-18-501, MCA, is amended to read:

"35-18-501. Filings relative to incorporation, amendment, conversion, merger, consolidation, and dissolution -- effect of filing -- transmittal to county clerk. (1) Articles of incorporation, amendment, consolidation, merger, conversion, dissolution, as the case

may be, when executed ~~and acknowledged~~ and accompanied by such affidavits as may be required by applicable provisions of this chapter, shall be presented to the secretary of state for filing in the records of his office. If the secretary of state shall find that the articles presented conform to the requirements of this chapter, he shall upon the payment of the fees as in this chapter provided file the articles so presented in the records of his office, and upon such filing, the incorporation, amendment, consolidation, merger, conversion, or dissolution provided for therein shall be in effect.

(2) The secretary of state immediately upon the filing in his office of any articles pursuant to this chapter shall transmit a certified copy thereof to the county clerk of the county in which the principal office of each cooperative or corporation affected by such incorporation, amendment, consolidation, merger, conversion, or dissolution shall be located. The clerk of any county, upon receipt of any such certified copy, shall file and index the same in the records of his office, but the failure of the secretary of state or of a clerk of a county to comply with the provisions of this section shall not invalidate such articles.

(3) The provisions of this section shall also apply to certificates of election to dissolve and affidavits of compliance executed pursuant to 35-18-405(2)."

NEW SECTION. Section 50. Codification instruction. (1) Section 1 is intended to be codified as an integral part of Title 30, chapter 13, part 2, and the provisions of Title 30, chapter 13, part 2, apply to section 1.

(2) Section 5 is intended to be codified as an integral part of Title 30, chapter 13, part 3, and the provisions of Title 30, chapter 13, part 3, apply to section 5.

-End-

2ND READING: 03/14/83 AYES: 49; NAYS: 0
3RD READING: 03/16/83 AYES: 46; NAYS: 1
RETURNED TO HOUSE 3/16/83

TRANSMITTED TO GOVERNOR: 03/23/83
SIGNED: 03/28/83, CHAPTER 250

HB 557 -- SANDS -- TO AMEND AND GENERALLY REVISE THE LAWS RELATING TO THE REQ... FOR EXECUTING CERTAIN DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING ... FOR MAKING FALSE STATEMENTS; AMENDING ....
BY REQUEST OF: THE SECRETARY OF STATE

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 01/29/83
HEARING: 2/7/83
REPORT: 02/07/83, DO PASS
2ND READING: 02/09/83, DO PASS AYES: 94; NAYS: 2
3RD READING: 02/12/83, DO PASS AYES: 99; NAYS: 0

TRANSMITTED TO SENATE: 02/12/83
REFERRED TO COMMITTEE ON STATE ADMINISTRATION: 02/12/83
HEARING: 3/2/83
REPORT: 3/2/83, BE CONCURRED IN, AS AMENDED
2ND READING: 03/05/83, AS AMENDED AYES: 49; NAYS: 0
3RD READING: 03/08/83 AYES: 47; NAYS: 0

RETURNED TO HOUSE WITH AMENDMENTS: 3/8/83
2ND READING: 03/10/83, BE CONCURRED IN AYES: 93; NAYS: 0
3RD READING: 03/11/83, BE CONCURRED IN AYES: 96; NAYS: 0

TRANSMITTED TO GOVERNOR: 03/18/83
SIGNED: 03/22/83, CHAPTER 174

HB 558 -- MANUEL, THOMAS, HAFFEY, ET AL. -- AUTHORIZING THE ISSUANCE AND SALE ... LONG-RANGE BUILDING PROGRAM BONDS; PROVIDING FOR AN AGREEMENT BETWEEN THE BOARD ... EXAMINERS AND THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS; ...

INTRODUCED: 01/29/83
REFERRED TO COMMITTEE ON APPROPRIATIONS: 01/29/83
HEARING: 4/9/83
REPORT: 4/10/83, DO PASS, AS AMENDED
2ND READING: 04/11/83, DO PASS AYES: 74; NAYS: 23
3RD READING: 04/11/83, DO PASS AYES: 70; NAYS: 22

TRANSMITTED TO SENATE: 4/11/83
REFERRED TO COMMITTEE ON RULES: 04/13/83
REPORT: 04/14/83, BE ADOPTED
REREFERRED TO COMMITTEE ON FINANCE & CLAIMS: 04/14/83
REPORT: 04/15/83, BE CONCURRED IN
2ND READING: 04/18/83 AYES: 49; NAYS: 0
3RD READING: 04/19/83 AYES. 45; NAYS: 2

RETURNED TO HOUSE: 4/19/83

TRANSMITTED TO GOVERNOR: 4/21/83
SIGNED: 4/27/83, CHAPTER 643

committee has no authority to say, "Hold, you must stop."

Senator Stimatz said often the reason the courts throw out a rule is that when the court looked at the proceedings they found inadequate proof for the necessity of the rule. General procedure now is that an agency will say the necessity for the rule is explicit in the statute. This is not enough for the courts. The actual necessity must be documented and be on record. All this bill does is give the authority to advise the agency and because of this being in the statute they will pay more attention to the advice. Mr. Smith responded that the real meat of the bill is on page 3, lines 9-13, whereby the agency is required to come with evidence to show the reasonable necessity.

Rep. McBride asked why we are drawing the attention only to the reasonable necessity aspect and not the conflict of statute aspect.

Chairman Brand closed the hearing on this bill and opened the hearing on HB 557.

HOUSE BILL 557

REPRESENTATIVE JACK SANDS, District 68, chief sponsor, said the bill was requested by the Secretary of State, and is to reduce some unnecessary paperwork problems that people are now having in conducting their business in his office. Current law requires that most documents filed here must be acknowledged and verified by a notary public which is to prove that person is really who he says he is and the information provided is accurate. This bill eliminates many of the requirements for acknowledgement and verification of documents that need to be signed by the secretary of state. Cases where a right is assigned would still need to be verified. Penalties for false swearing are made uniform. If anybody knowingly executes a document that contains false information that will materially affect the outcome of the proceedings, he is guilty of perjury and that penalty is not to exceed 10 years or a $50,000 fine or both.

CLIFF CHRISTIAN, representing the Secretary of State, said this was to eliminate some unneeded paper work in their corporation section, especially with assumed business names and trade marks and limited partnerships. A number of papers here need to be rejected because they are not properly notarized. The papers they are signing will have the warning printed on that all information must be accurate or the signer will be guilty of perjury. He said the bureau chief of corporations was present to answer questions.

There were no opponents.

REPRESENTATIVE SANDS closed.

Questions were asked by the committee.

Chairman Brand asked about the penalties. Rep. Sands said it is now a misdemeanor but the bill would increase it to a felony. Mr. Christian said this would keep it in line with other penalties in other codes.

Chairman Brand closed the hearing on this bill and opened the meeting to a hearing on House Bill 559.

HOUSE BILL 559

REPRESENTATIVE JOHN PHILLIPS, District 43, chief sponsor, said the bill was requested by the Secretary of State. He said our present law has very detailed specifications concerning envelopes mailed electors in the United States service. This now doesn't comply with the federal regulations and this bill merely gives the secretary of state the perogative to print envelopes of the type that will comply. The correct term to have on the envelope is "U.S. Postage Paid" as the foreign countries to which these might be mailed don't recognize the present term "free postage." He said there is a statement of intent with the bill and he passed copies to the members (Exhibit 1). An example of the approved envelope is Exhibit 2.

CLIFF CHRISTIAN, Secretary of State's Office, spoke in support. He said he had a letter from the Department of Defense telling the state they were having problems with the ballot envelopes marked "free postage" in foreign countries as they refuse to accept that. This is Exhibit 3. He said the bill would make the laws of Montana applicable to any laws that might come down on this from the federal department.

BILL ROMINE, Clerks and Recorders, said his people actually mail out the letters. He said it doesn't make sense to lock ourselves into a statutory requirement on this. He said the authority should be given to the secretary of state to follow the federal rules on how the envelopes should look as we have to follow their regulations if we want to use the mails.

REPRESENTATIVE PHILLIPS closed.

Chairman Brand asked if there should be a fiscal note on this as new envelopes would be needed. The sponsor said there should be no extra cost above what is now appropriated as the leftovers could be used up within this country.

EXECUTIVE SESSION

HOUSE BILL 547 Rep. Mueller moved to strike subsection 3 in its entirety and replace with "Registration of the individual is not complete until the registration is reviewed by the election administrator's office and verified." Title would need to be changed also. The researcher was asked to make any word changes needed to have the intent worded correctly. The motion carried unanimously. Rep. Mueller moved AND AS AMENDED DO PASS and it was seconded by Rep. Smith. Rep. Driscoll said he was still concerned about what might happen if he brought in a bunch of cards at 5 p.m. on the 30th day. Ms. Menzies, the researcher, suggested eliminating the three days and then that should not be a problem. Ms. Molitor said that any card received in the office until 5 p.m., even if it comes in at 4:59 on the date, will be honored whether 200 or 500. The date is what determines when the 30 days start. Rep. Mueller withdrew his motion and Rep. Smith his second when the committee decided to have Ms. Menzies check on this point if the verification has to be done before the 30th day.

HOUSE BILL 557 Rep. Solberg moved DO PASS and Rep. Smith seconded the motion. Motion carried unanimously.

HOUSE BILL 559 Rep. Phillips moved the bill and the statement of intent DO PASS. Motion carried unanimously.

SENATE BILL 45 Chairman Brand said the suggestion was to amend page 4 by striking lines 5-9 and the reason for this is that it appears they can do this anyway. Ms. Menzies replied to a question concerning the new language on page 4 which complements language contained in section (6)(b) on page 3. Rep. McBride offered an observation - inconsistency in what we are doing as page 3 talks about the criteria that can be used to determine whether a rule is consistent with the law. The first talks about the law not being in conflict with the statute and the second one about the reasonable necessity. It would give the committee the power to review the reasonable necessity but not the power to see if it's in conflict with the statute. If they have it, why do we need to outline the ability to check, the reasonable criteria. She said we are making the record on page 3, lines 9-13. Rep. Mueller siad it appears to him that section 2 deals with the power of the committee and if you don't have this clause in here you are putting the powers of the committee on the reasonableness of the provision. He felt it was very important that it be there, otherwise it would gut the bill. Rep. McBride asked if we should consider adding some language to review that the rule is consistent and not in conflict with the statute. Rep. Mueller asked Ms. Menzies if she agreed that we should take this language out from a technical standpoint. Ms. Menzies replied that what Rep. McBride is saying is true - it is better to include the other section that says consistent and

STANDING COMMITTEE REPORT

FEBRUARY 7, 19 83

MR. SPEAKER

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 557

first white
reading copy (color)

"AN ACT TO AMEND AND GENERALLY REVISE THE LAWS RELATING TO THE REQUIREMENTS FOR EXECUTING CERTAIN DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING PENALTIES FOR MAKING FALSE STATEMENTS; AMENDING SECTIONS 30-13-203, 30-13-207, 30-13-212, 30-13-311, 30-13-313, 30-13-318, 35-1-201, 35-1-209, 35-1-212, 35-1-213, 35-1-306, 35-1-412, 35-1-602, 35-1-612, 35-1-804, 35-1-805, 35-1-901,THROUGH 35-1-903, 35-1-907, 35-1-908, 35-1-911, 35-1-1003, 35-1-1013, 35-1-1017, 35-1-1101, 35-2-413, 35-2-1201, 35-6-201, 35-15-201, 35-15-204, 35-15-205, 35-15-305, 35-15-504, 35-17-202 THROUGH 35-17-204, 35-17-504, 35-18-203,THROUGH 35-18-206, 35-18-401, 35-18-402, 35-18-404, 35-18-405, AND 35-18-501, MCA."

Respectfully report as follows: That STATE ADMINISTRATION Bill No. 557

DO PASS

REP. JOE BRAND, Chairman.

COMMITTEE SECRETARY

STATE PUB. CO.
Helena, Mont.

House State Administration Committee

Bill Summaries

Monday, February 7, 1983

HB 547 (Hand): This bill requires an election administrator to assign a number to each person properly completing a registration card within 3 days after receiving the card. Without assignment of this number, the elector's registration is incomplete.

HB 557 (Sands): Requested by the Secretary of State, this bill provides that the execution of a document to be filed with the Secretary of State constitutes an affirmation by the person executing the document that the facts in the document are true. The bill requires that the Secretary of State provide for the printing of a warning to this effect on each form prescribed by him. If an individual signs a false statement, he may be subject to the penalties of perjury. (A person convicted of perjury shall be punished by imprisonment in the state prison for a term not to exceed 10 years or punished by a fine of not more than $50,000, or both.)

HB 559 (Phillips): Current law provides very detailed specifications concerning envelopes in which ballots are mailed to electors in the United States service. This bill, requested by the Secretary of State, removes these statutory requirements and permits the Secretary of State to prescribe specifications consistent with regulations established by federal agencies. (A statement of intent must accompany this bill.)

SB 45 (Stimatz): Under the Montana Administrative Procedure Act, no rule adopted by an agency is valid or effective unless it is reasonably necessary to implement the purpose of the statute. This bill, requested by the Administrative Code Committee, requires that this necessity be demonstrated in the agency's notice

VISITOR'S REGISTER

HOUSE _____ COMMITTEE

BILL 557 DATE _____

SPONSOR _____

NAME	RESIDENCE	REPRESENTING	SUP-PORT	OP-POSE
Elena Armagost	Helena	Sec of State	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

FORM CS-33

QUESTIONS OF THE COMMITTEE:

SENATOR MANNING asked if this would cut costs.

MR. CHRISTIAN said it would.

The hearing closed on H.B.167.

ACTION ON HOUSE BILL 167:
SENATOR MANNING MOVED THAT H.B.167 BE CONCURRED IN. MOTION PASSED. Senator Story will carry this bill to the floor.

CONSIDERATION OF HOUSE BILL 557:
"AN ACT TO AMEND AND GENERALLY REVISE THE LAWS RELATING TO THE REQUIREMENTS FOR EXECUTING CERTAIN DOCUMENTS FILED WITH THE SECRETARY OF STATE; PROVIDING PENALTIES FOR MAKING FALSE STATEMENTS; AMENDING SECTIONS...."

REPRESENTATIVE SANDS, District 68 introduced this bill and stated that notorization and verification was always the rule and many people did not realize this so instead of requirements of notorizing and verifying, there could be printed on the document that the person swears the information is true to the best of their knowledge. If the person signs this knowing that the information is false he is subject to perjury.

PROPONENTS:

ALAN ROBERTSON of the Secretary of State's office testified in favor of this bill and said that it is done in other states. He said that they have been taking about 2000 documents a year that must be rejected. This law is already in place in the statutes. Mr. Robertson presented copies of documents EXHIBITS 2 and 3. EXHIBITS 4 and 5 are varification statements.

BOB MURDO, representing the Business Law Section of the State Bar of Montana testified in favor of H.B.557 and expressed what the amendments in the bill are doing. It was his suggestion that Section 29 be deleted. EXHIBIT 6 is Mr. Murdo's testimony.

SENATOR MARBUT questioned him about the language on page 41 removing non-profit organization and what is non-profit.

BOB MURDO said you have to be non-profit under the non-profit laws.

ALAN ROBERTSON stated that they do concur in Section 29 being removed from the bill.

The record will note written testimony EXHIBIT 7, from Ward Shanahan to the Secretary of State.

QUESTIONS OF THE COMMITTEE: (H.B.557)

SENATOR TOWE asked what the penalty is for perjury.

REPRESENTATIVE SANDS said it was $50,000 or 10 years in jail.

SENATOR TOWE commented that that was quite a change.

MR. MURDO stated that he is not sure that it is that much of a change.

SENATOR TOWE stated that the penalty for signing a false document now is a misdemeanor.

MR. ROBERTSON stated that that does not apply here. He said that he believes "swearing" in the statutes is $500 or six months but that attorneys differ on this.

Mr. Robertson said that section 29 shows consistency but the churches objected so they took it out.

REPRESENTATIVE SANDS stated the problem with Section 29 was just pointed out to him but that he has no problem with it either way.

The hearing closed on House Bill 557.

CONSIDERATION OF HOUSE BILL 346:
"AN ACT TO DELETE THE REQUIREMENT THAT STATE AGENCIES AND THE GOVERNOR SUBMIT CERTAIN REPORTS; AMENDING SECTIONS ..."

REPRESENTATIVE NANCY KEENAN, District 89, introduced H.B.346 and said that this bill deletes the commissioner's report and the governor's report. She reviewed the sections and their changes and said that this will be a savings of about $31,000.

PROPONENT:

DAVE LEWIS with Budget, Program and Planning testified that this goes way back and with the legislative staff now it is not necessary. He said no one he knows put out the reports.

OPPONENTS: None

QUESTIONS OF THE COMMITTEE:

SENATOR TOWE said that he receives the reports and looks them over but did agree the reports are not necessary and there is the information in the budget books but ask that they be a little more complete now.

SENATOR TOWE remarked that many non-profit organizations are donated time, such as the Search and Rescue.

ACTION ON H.B.557:
SENATOR TOWE MOVED TO AMEND H.B.557 BY STRIKING SECTION 29 and include the title.
MOTION PASSED.
SENATOR TOWE MOVED THAT H.B. BE CONCURRED IN AS AMENDED.
MOTION PASSED. Senator Towe will carry this bill.

ACTION ON H.B.173:
SENATOR HAMMOND MOVED S.B.173 BE CONCURRED IN.
MOTION PASSED. Senator Story will carry this bill.

ACTION ON H.B.36:
SENATOR HAMMOND MOVED H.B.36 BE CONCURRED IN.
MOTION PASSED.

ACTION ON H.B.37: Held

Discussion was held on this bill.
SENATOR MARBUT presented his amendments.
SENATOR STORY asked that this bill be held until Friday and that Senator Marbut present his amendments at that time.

ACTION ON H.B.47:

SENATOR TOWE presented amendments shown as EXHIBIT 10.
SENATOR TOWE MOVED THE AMENDMENTS.
MOTION PASSED.
SENATOR TOWE MOVED H.B.47 BE CONCURRED IN AS AMENDED.
MOTION PASSED. Senator Towe will carry this bill.

ACTION ON H.B.92:

SENATOR TOWE MOVED AMENDMENT TO SUBSECTION 2.
MOTION PASSED

SENATOR TOWE MOVED THE AMENDMENT ON PAGE 2, LINE 9 thru 12.
MOTION PASSED. Senators Hammond and Marbut voting "NO".

SENATOR TOWE MOVED AMENDING PAGE 2, LINE 9 & 10.
MOTION PASSED. Senators Hammond and Marbut voting "NO".

SENATOR TOWE MOVED LINE 20 PAGE 2 CHANGING "shall" to "may".
MOTION PASSED.

SENATOR TOWE MOVED H.B.92 BE CONCURRED IN AS AMENDED. EXHIBIT 11.
MOTION PASSED.

ROLL CALL

STATE ADMINISTRATION COMMITTEE

47th LEGISLATIVE SESSION -- 1983 Date 3/2/83

NAME	PRESENT	ABSENT	EXCUSED	SENATE SEAT #
SENATOR PETE STORY, Chairman	X			45
SENATOR H. W. HAMMOND, Vice Ch	X			34
SENATOR REED MARBUT	X			44
SENATOR LARRY TVEIT				33
SENATOR R. MANNING	X			48
SENATOR LAWRENCE STIMATZ				7
SENATOR THOMAS TOWE	X			26

Each day attach to minutes.

DATE March 2, 1983

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
MICHAEL HUNT	MONT ST. FIRE FIGHTERS	HB 487	✓	
BOB MURDO	BUSINESS LAW SECTION - STATE BAR	HB 557	✓	
Michael Walker	Mt. St. Council Fire Fighters	487	✓	
Paul Robertson	Sec of St	HB 557	✓	
Cal Christian	Sec of State	107-173 557-107	✓	
Dave Lewis	OBPP	HB 346	✓	
Wayne Campbell	Sec of State	HB 107 173	✓	
MS Davis	LWVMT	HB 173	amend	

(P... leave prepared statement with Secretary)

(For use by the Secretary of State only)

Prepare, execute and submit in duplicate original

FILED FOR RECORD

TO: THE HONORABLE JIM WALTERMIRE
Secretary of State
Montana State Capitol
Helena, MT 59620

Filing Fee: $20.00

STATE OF MONTANA

APPLICATION FOR REGISTRATION AND CERTIFICATE OF REGISTRATION OF MARK (Trademark - Service Mark)

For the purpose of registering a mark in the State of Montana, according to the provisions of 30-13-311, MCA, the undersigned submits the following statements of fact to the Secretary of State:

1. The essential feature of the mark to be registered is

_____

_____

_____

and attached hereto is a specimen, facsimile or drawing of the mark. (Attach in the space below or if on another sheet, attach to this form).

4. The name of the applicant is_____

_____

5. The business address of the applicant, including street and number, if any, and city or town and state, is

_____
(street number) (street)

_____
(city or town) (state) (zip code)

6. The applicant is (check one and complete when appropriate)

☐ An individual

☐ A partnership and the names and addresses of the

(3) **The classes of service marks are as follows:**

(a) miscellaneous;
(b) advertising and business;
(c) insurance and financial;
(d) construction and repair;
(e) communications;
(f) transportation and storage;
(g) material treatment;
(h) education and entertainment.

(mm) clothing;
(ll) prints and publications;
(kk) paper and stationery;
(jj) musical instruments and supplies;
nonmetallic tires;
(ii) belting, hose, machinery packing, and
(hh) heating, lighting, and ventilating apparatus;
(gg) glassware;
(ff) furniture and upholstery;
(ee) filters and refrigerators;
(dd) crockery, earthenware, and procelain;
(cc) brooms, brushes, and dusters;
(bb) jewelry and precious metal ware;
(aa) horological instruments;
(z) measuring and scientific appliances;
(y) locks and safes;
(x) laundry appliances and machines;
thereof;
(w) cutlery, machinery, and tools, and parts
(v) games, toys, and sporting goods;
supplies;
(u) electrical apparatus, machines, and

(sub)stitutes therefore;
(qq) thread and yarn;
(rr) dental, medical, and surgical appliances;
(ss) soft drinks and carbonated waters;
(tt) food and ingredients of foods;
(uu) wines;
(vv) malt beverages and liquors;
(ww) distilled alcoholic liquors;
(xx) merchandise not otherwise classified;
(yy) cosmetics and toilet preparations;
(zz) detergents and soaps.

(r) medicines and pharmaceutical preparations;
(q) tobacco products;
(p) paints and painters' materials;
(o) oils and greases;
(n) metals and metal casting and forgings;
supplies;
(m) hardware and plumbing and steamfitting
(l) construction materials;
(k) inks and inking materials;
(j) fertilizers;
(i) explosives, firearms, equipment, and projectiles;
products;
(h) smokers' articles, not including tobacco
(g) cordage;
(f) chemicals and chemical compositions;
(e) adhesives;
(d) abrasive and polishing materials;
and pocketbooks;
(c) baggage, animal equipments, portfolios,
(b) receptacles;

COMPLETE THE ONE AFFIDAVIT THAT IS APPROPRIATE.

- **Affidavit if applicant is a corporation, partnership, or association.**

State of _____)
) ss.
County of _____)

I, _____, being first duly sworn
(Name of Officer making affidavit)

depose and say that I am _____, of
(President, Vice President or Secretary or a Partner)

_____, the applicant
(Complete Name of Applicant)

herein, and make this affidavit in its behalf; that I have read the foregoing application; that the facts set out therein are true; that the applicant is the sole owner of the mark sought to be registered and has the right to the use of the same and that no other person has the right to such use in this state, either in the identical form or in such near resemblance thereto as may be calculated to deceive or might be mistaken for; and that the description and facsimile filed herewith is true and correct; and

that I executed this document this _____ day of _____, 19____.

X _____
(Signature)

Subscribed and sworn to before me this _____ day of _____, A.D. _____

_____

NOTARIAL SEAL

Notary Public for the State of _____

Residing at _____

My Commission expires _____

★ ★ ★

- **Affidavit if applicant is an individual.**

State of _____)
) ss.
County of _____)

I, _____, being first duly sworn
(Name of Applicant)

depose and say that I am the applicant herein (doing business as _____); that I have read the foregoing application; that the facts set out therein are true; that I am the sole owner of the mark sought to be registered and have the right to the use of the same; that no other person has the right to such use in this state, either in identical form or in such near resemblance thereto as may be calculated to deceive or might be mistaken for; and that the description and facsimile filed herewith is true and correct; and that I executed this document this _____ day of _____, 19____.

X _____
(Signature)

Subscribed and sworn to before me this _____ day of _____, A.D. _____

_____

NOTARIAL SEAL

Notary Public for the State of _____

Residing at _____

My Commission expires _____

CLASSES: To assist you in completing item 2, the State Statute regarding classes is reprinted for your reference.

30-13-331. Classification. (1) The following general classes of goods and services are established for convenience of administration of this part. This classification does not limit or extend the applicant's or registrant's rights. A single application for registration of a mark may include any or all goods or services comprised in a single class with regard to which the mark is actually being used. However, in no event may a single application include goods or services that fall within different

LP4-A

STATEMENT ON ELECTION
For Limited Partnerships

EXHIBIT 3
State Admin.
March 2, 1983

To Become Subject to the Provisions of the
REVISED UNIFORM LIMITED PARTNERSHIP ACT

TO: THE HONORABLE JIM WALTERMIRE
MONTANA SECRETARY OF STATE
STATE CAPITOL
HELENA, MT 59620

(For use by the Secretary of State only)

Fee: $ 7.50

For the purpose of bringing itself within the provisions of the Montana Revised Uniform Limited Partnership Act, Title 35, Chapter 12, MCA, the undersigned submits the following statements of fact to the Secretary of State of Montana:

FIRST: The name of the limited partnership is _____

_____

(The name must contain the words LIMITED PARTNERSHIP in full)

SECOND: The certificate of limited partnership was filed in the office of the Secretary of State, State of Montana, under the laws of the State of Montana on _____, 19___, for the duration of _____ years, and it is carrying on the business or conducting the affairs for which it was created.

THIRD: It elects to bring itself within the provisions of the Montana Revised Uniform Limited Partnership Act and make itself subject to its provisions.

FOURTH: It designates as its specified agent the following named individual resident, domestic corporation, or qualified foreign corporation:

_____

FIFTH: It designates as its specified office the following: _____

_____

(Street and number, City, State and Zip Code)

SIXTH: And it attaches an amended Certificate of Limited Partnership setting forth any and all information required by 35-12-601 which is not otherwise set forth.

Dated this _____ day of _____, 19___.

_____

(Name of Limited Partnership)

_____

(Signature of General Partner)

NOTE: The execution of a certificate by a general partner constitutes an affirmation under the penalties of perjury that the facts stated therein are true, according to 35-12-604(3), MCA.

EXHIBIT 4
State Admin.
March 2, 1983

TO: Alan

FROM: Florence

RE: Notary Info

DATE: March 1, 1983

Attached are Limited Partnership Election forms (most others have a notary section) and Statement of Change forms as requested. We have no forms that require two signatures on any application as the applicant signature and verification are one.

During January and Februay 1983 we filed 8686 documents and rejected 2119 documents for 24.4%.
Approximately 27-30% of the rejects are rejected because of no notary or incorrect verification/acknowledgement - Using above ratio we woul have rejected approx. 570 in Jan & Feb for this reason.

In 1982 we filed 34,184 documents. Using the above ratios we would have rejected 8340 documents total and 2251 for verification, etc.

Please know these are very rough estimates!!

EXHIBIT 5
State Administration
March 2, 1983

TO: Cliff

FROM: Florence

DATE: February 7, 1983

RE: Notorization in other states

Prior to preparing legislation for my bureau, I sent a questionnaire to all the states to see how each of them handled the various issues we were addressing.

Forty four of the 50 states responded. I found the following concerning notorization of documents:

14 required all documents to be notorized (acknowledged or verified)

20 required no notorization (signed under penalty)

10 required notorization of only selected documents (could not see any one reason for selection of various documents as opposed to either all or none)

Cliff, if you need more, let me know. Thanks.

CS-34

EXHIBIT 6
State Admin.
3/2/83

NAME Bob Murdo BILL NO. HB 557

ADDRESS 203 No. Ewing Helena, MT. DATE 3/2/83

WHOM DO YOU REPRESENT Business Law Section - State Bar of Montana

SUPPORT _____ OPPOSE _____ AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

THE Governing Council of the Business Law Section of the State Bar of Montana supports HB 557 with the amendment recommended by the Secretary of State — i.e. - Deletion of Section 29.

STATE BAR OF MONTANA

2030 ELEVENTH AVENUE • WASHINGTON PLAZA
P.O. BOX 4669 • HELENA, MONTANA 59604 • (406) 442-7660

EXHIBIT 7a

State Admin.
March 2, 1983

HB 557

EXECUTIVE DIRECTOR
Kent M. Percell

February 14, 1983

Hon. James Waltermire
Secretary of State
State Capitol
Helena, MT 59620

Re: House Bill 557

Dear Mr. Waltermire:

I am a member of the Council of the Business Section of the State Bar of Montana and have been actively involved in the revision of the corporation laws of Montana for the last twenty years. I was a member of the Corporation Law Revision Commission which introduced the American Bar Association Model Business Corporation Act, and I was a member of the Business Section Committee which introduced the substantial amendments which were made in the Act in the 1981 Legislative Session.

House Bill 557 involves an amendment of the Business Corporation Act and the Montana Nonprofit Corporation Act. Although laudible in purpose, it involves a rather severe series of penalties with respect to documents filed in your office. Many documents that are filed in your office are those routinely handed to corporate officers. If false or incorrect information is inadvertently inserted, the penalty of House Bill 557 is quite severe. To subject an officer signing a document with the "penalties of perjury" when an inadvertent omission or statement might be involved goes far beyond any present needs that I know of. Have there been a great number of false and fraudulent documents filed with your office? Nonprofit corporations such as churches and fraternal organizations have officers who are not paid and who rely upon "volunteers" to prepare documents for filing in your office in most cases. Why should the penalty of perjury also be imposed upon them?

I am not aware that anybody involved in the revisions of the Model Business Corporation Act and the Model Nonprofit Corporation Act was ever consulted by your office

EXHIBIT 7b
State Admin
March 2, 1983

with respect to these changes. The Business Section is composed of law professors and practitioners who work with these provisions of the law on a regular basis. At several times in the past we have invited the Secretary of State's Office to participate in the Business Section. Our section has worked long and hard to achieve careful integration of the various provisions of the Model Corporation Code and effect a desirable and uniform result.

Unless it can be demonstrated that there is a flagrant and widespread abuse of truthfulness in the filing of documents with your office, I would have to recommend that the Business Section of the State Bar of Montana oppose House Bill 557, which amends Section 35-2-413 of the Nonprofit Corporation Act.

Very truly yours,

STATE BAR OF MONTANA

Ward A. Shanahan, Member of the Council, Business Section

WAS/mje
cc: Professor J. G. Wyse, Chairman, State Bar Business Section
J. C. Weingartner, State Bar Legislative Liaison
Kent Parcell, Executive Director, State Bar of Montana
Senator Pete Story
0776W

STANDING COMMITTEE REPORT

MARCH 2 19 83

MR. PRESIDENT

We, your committee on STATE ADMINISTRATION

having had under consideration HOUSE Bill No. 557

Sands (Towe)

Respectfully report as follows: That HOUSE Bill No. 557

third reading, be amended as follows:

1. Title, line 14.
   Strike: "35-2-413,"

2. Page 41, line 11.
   Strike: Section 29 in its entirety
   Renumber: subsequent sections

Anddas so amended
DO~~PASS~~ BE CONCURRED IN

SENATOR PETE STORY Chairman.

STATE PUB. CO.
Helena, Mont.